



Assessment Conference Determination

Company:	<u>Red River Coal Company, Inc.</u>	Permit No.:	<u>1102046</u>
Penalty of:	<u>Notice of Violation No. LHT0001463</u>	Violation No.:	<u>1 of 1 (BL)</u>
Conference:	<u>June 2, 2011 at 10:00 a.m.</u>	Location:	<u>Permit (Dixiana Lab)</u>
Participants:	<u>Eddie Clapp (Engineer, Red River Coal Co.); Lawrence Tankersley (DMLR Inspector)</u>		

Summary of Conference

Eddie Clapp said Red River Coal Company, Inc., Permit No. 1102046 was transferred from A & G Coal Corp. Mr. Clapp explained that at the time of the transfer Red River Coal Company, Inc did not receive a complete copy of the detailed plans. Mr. Clapp said all of the Red River Coal Company, Inc. permits where houses are not located in close proximity to the permits, have approval to monitor air blast one time per calendar quarter. Mr. Clapp said the closest houses to Permit No. 1102046 are approximately ½ mile away which is similar to the other Red River Coal Company, Inc. permits. Mr. Clapp explained that he assumed Permit No. 1102046 was also approved to monitor air blast one time per calendar quarter. Mr. Clapp explained that he therefore started monitoring air blast on Permit No. 1102046 one time per calendar quarter. Mr. Clapp said upon receiving the notice of violation he realized that a permit revision approved on March 7, 2011 required monitoring of air blast to occur once per quarter or every 25th blast.

Mr. Clapp said between December 15th 2010 and March 22nd of 2011, there were 40 blasts detonated on Permit No. 1102046. Mr. Clapp said 25 blasts would have probably been detonated from December 15th 2010 to the end of February 2011. Mr. Clapp said Notice of Violation No. LHT0001463 was basically issued for failing to monitor air blast every 25 blasts.

Mr. Clapp said based on the circumstances the seriousness points should be lowered or sat at zero. Mr. Clapp explained that there is nothing that precludes the DMLR from conducting seismograph monitoring anytime they determine it necessary. Mr. Clapp said the houses are generally ½ mile away from the area where the company was conducting blasting. Mr. Clapp said the seismograph did not register any readings at the times the company conducted air blast monitoring in that area. Mr. Clapp said the blasting in this area is so far from houses that the seismograph has only registered a reading one or two times over the past few years. Mr. Clapp said typically a seismograph will not register a reading at these distances unless there is some unique weather or condition. Mr. Clapp said the violation did not cause any problems, and there were no citizen complaints registered. Mr. Clapp said he did not recall every getting a blasting complaint on Permit No. 1102046. Mr. Clapp said even though air blast was not being monitored at the frequency designated in the detailed plans, air blast was being monitored once per quarter. Mr. Clapp said originally the air blast monitoring frequency for blasting situations of

this type was set by DMLR at once per month and after a review of the circumstances the monitoring frequency was lowered to once per quarter. Mr. Clapp said monitoring at a greater frequency is just not necessary. Mr. Clapp explained that there was no environmental harm caused by the violation cited.

Mr. Clapp said the negligence points should be lowered. Mr. Clapp said he would have to accept some negligence because he should have researched the detailed plans more carefully. Mr. Clapp said although he does not feel the inspector is required to notify him of permit requirements, sometimes inspectors will remind operators of such items.

Mr. Clapp said this violation has not hindered the Division's abilities to enforce the regulations. Mr. Clapp said based on the circumstances there should not have been a civil penalty assessed on this notice of violation.

Assessment Conference Recommendation

For NOV # LHT0001463, violation 1 of 1, it is my decision to reduce the seriousness points from three to two. There were no houses in close proximity to the blasting operations being conducted during the 1st quarter of 2011. In fact, the closest houses to Permit No. 1102046 are approximately ½ mile away. The company's seismograph had not registered any readings for the blasts detonated during the 1st quarter 2011, and Mr. Clapp stated that the seismograph had only registered readings one or two times over the past few years at this site. Also, there were no citizen complaints filed for any of the blasts detonated during the 1st quarter 2011, and Mr. Clapp stated that there have not been any citizen complaints filed regarding blasting on Permit No. 1102046. Although failure to conduct the required seismograph monitoring hinders the DMLR's ability to determine if blasting is being conducted in accordance with the approved detailed plans, the potential for blasting related impacts is deemed minimal.

It is my decision to affirm the three negligence points. The company failed to conduct the seismograph monitoring as required in the approved detailed plans. The plan required monitoring to be conducted once per quarter or once every 25 shots, whichever was more frequent. As documented in Lawrence Tankersley's inspection report of March 21, 2011, the operator failed to conduct the required monitoring in accordance with the approved detailed plans during the 1st quarter of 2011. Mr. Clapp said he did not realize the plans required one blast to be monitored for air blast each quarter or once every 25th blast. The operator must exercise reasonable care to ensure he is familiar with the requirements of the detailed plans and revisions included in his permits. Red River Coal Company, Inc. is the permittee of this operation and is therefore responsible for compliance with the Reclamation Regulations and all requirements of the detailed plans.

Good faith points were not recommended for the compliance of this Notice of Violation and are not awarded. It is my decision to reduce the civil penalty assessment from \$360.00 to \$292.00.

Assessment Conference Determination:

Permit No. 1102046 NOV# LHT0001463, violation 1 of 1 ()

	Proposed Assessment or Reassessment	Assessment Conference Recommendation
I. History of previous violation	\$ 0.00	\$ 0.00
II. Seriousness Points	3	2
III. Negligence Points	3	3
IV. Good Faith Points	--	
Total Points:	6	5
Base Penalty:	\$ 400.00	\$ 325.00
History Penalty:	\$ 0.00	\$ 0.00
Total Penalty:	\$ 360.00*	\$ 292.00*
* Includes 10% reduction of base penalty per 4VAC25-130-845.13(e)(1) VCSMRR		

Conference Officer: _____
James D. Meacham

Date